



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB1132

Introduced 2/11/2009, by Rep. Naomi D. Jakobsson

SYNOPSIS AS INTRODUCED:

20 ILCS 505/9.9	from Ch. 23, par. 5009.9
325 ILCS 5/7.4	from Ch. 23, par. 2057.4
325 ILCS 5/7.12a new	
325 ILCS 5/7.12b new	
325 ILCS 5/7.15	from Ch. 23, par. 2057.15
325 ILCS 5/7.16	from Ch. 23, par. 2057.16
325 ILCS 5/8.3	from Ch. 23, par. 2058.3

Amends the Children and Family Services Act and the Abused and Neglected Child Reporting Act. Provides that these amendatory changes may be cited as the Child Abuse Registry Accuracy and Fairness Act of 2009. Provides that notice to subjects of a report of suspected child abuse or neglect shall be served via personal delivery (verified by the subject's signature) or certified mail, and sets forth the required contents of the notice. Provides for notice of determinations that a report is "indicated", "unfounded", or "undetermined", and sets forth required contents of notice of an indicated report. Adds provisions concerning expungement of an indicated report. Provides for an appeal by a subject of a report who claims that he or she did not have actual notice that an indicated report had issued against him or her. Makes other changes concerning judicial review of final administrative decisions by the Department of Children and Family Services, the Department's handling of reports of suspected child abuse or neglect, determinations by the Department's Child Protective Service Unit, and expungement of information from the central register of child abuse and neglect.

LRB096 04542 DRJ 14597 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning families and children.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Child
5 Abuse Registry Accuracy and Fairness Act of 2009.

6 Section 5. Legislative findings. The General Assembly
7 finds that:

8 (1) The State Central Register ("Register") of
9 substantiated (also known as "indicated") reports of child
10 abuse or neglect maintained by the Department of Children and
11 Family Services under the Abused and Neglected Child Reporting
12 Act must be an accurate database in order for the Department of
13 Children and Family Services to fulfill its statutory mandate
14 of protecting the health, safety, and best interests of the
15 child in all situations in which the child is vulnerable to
16 child abuse or neglect.

17 (2) The Register currently maintains indicated reports of
18 child abuse or neglect despite circuit court findings that the
19 facts are unsubstantiated, and thus results in individuals
20 being unjustly indicated as perpetrators for up to 50 years
21 without any means of redress.

22 (3) These individuals lose not only their pride and
23 reputation, but often their livelihood as well because they

1 cannot secure any employment in the child care profession.

2 (4) The Register currently maintains indicated reports of
3 child abuse or neglect despite a decision by the State's
4 Attorney that pursuing a circuit court finding of abuse or
5 neglect would not be in the best interest of the involved
6 minors.

7 (5) The Register currently maintains indicated reports of
8 child abuse or neglect, the substantiation of which have not
9 been subject to litigation due to the alleged lack of notice of
10 the report to alleged perpetrators.

11 (6) The failure to notify alleged perpetrators of the
12 indicated report and to allow those persons to litigate the
13 facts underlying a report of abuse or neglect results in the
14 Register containing inaccurately-indicated reports.

15 (7) An inaccurate Register seriously harms children
16 because children lose the benefit of a stable environment when
17 a caregiver is unjustly indicated and consequently barred from
18 any contact with the children for whom he or she cared.

19 Section 10. The Children and Family Services Act is amended
20 by changing Section 9.9 as follows:

21 (20 ILCS 505/9.9) (from Ch. 23, par. 5009.9)

22 Sec. 9.9. Review under Administrative Review Law. Any
23 responsible parent or guardian affected by a final
24 administrative decision of the Department in a hearing,

1 conducted pursuant to this Act, may have the decision reviewed
2 only under and in accordance with the Administrative Review Law
3 as amended. The provisions of the Administrative Review Law,
4 and the rules adopted pursuant thereto, shall apply to and
5 govern all proceedings for the judicial review of such final
6 administrative decisions of the Department, except that the
7 Department's final administrative decision shall be deemed to
8 have been served upon the party affected by the decision on the
9 date upon which the subject, or the subject's authorized
10 representative, received, via certified mail or verified
11 personal delivery, the Department's written final decision.
12 The term "administrative decision", is defined as in Section
13 3-101 of the Code of Civil Procedure.

14 Appeals from all final orders and judgments entered by a
15 court upon review of the Department's orders in any case may be
16 taken by either party to the proceeding and shall be governed
17 by the rules applicable to appeals in civil cases.

18 The remedy herein provided for appeal shall be exclusive,
19 and no court shall have jurisdiction to review the subject
20 matter of any order made by the Department except as herein
21 provided.

22 (Source: P.A. 83-1037.)

23 Section 15. The Abused and Neglected Child Reporting Act is
24 amended by changing Sections 7.4, 7.15, 7.16, and 8.3 and by
25 adding Sections 7.12a and 7.12b as follows:

1 (325 ILCS 5/7.4) (from Ch. 23, par. 2057.4)

2 Sec. 7.4. (a) The Department shall be capable of receiving
3 reports of suspected child abuse or neglect 24 hours a day, 7
4 days a week. Whenever the Department receives a report alleging
5 that a child is a truant as defined in Section 26-2a of The
6 School Code, as now or hereafter amended, the Department shall
7 notify the superintendent of the school district in which the
8 child resides and the appropriate superintendent of the
9 educational service region. The notification to the
10 appropriate officials by the Department shall not be considered
11 an allegation of abuse or neglect under this Act.

12 (b) (1) The following procedures shall be followed in the
13 investigation of all reports of suspected abuse or neglect
14 of a child, except as provided in subsection (c) of this
15 Section.

16 (2) If it appears that the immediate safety or
17 well-being of a child is endangered, that the family may
18 flee or the child disappear, or that the facts otherwise so
19 warrant, the Child Protective Service Unit shall commence
20 an investigation immediately, regardless of the time of day
21 or night. In all other cases, investigation shall be
22 commenced within 24 hours of receipt of the report. Upon
23 receipt of a report, the Child Protective Service Unit
24 shall make an initial investigation and an initial
25 determination whether the report is a good faith indication

1 of alleged child abuse or neglect.

2 (3) If the Unit determines the report is a good faith
3 indication of alleged child abuse or neglect, then a formal
4 investigation shall commence and, pursuant to Section 7.12
5 of this Act, may or may not result in an indicated report.
6 The formal investigation shall include: direct contact
7 with the subject or subjects of the report as soon as
8 possible after the report is received; an evaluation of the
9 environment of the child named in the report and any other
10 children in the same environment; a determination of the
11 safety of ~~risk to~~ such children if they continue to remain
12 in the existing environments, as well as a determination of
13 the nature, extent and cause of any condition enumerated in
14 such report; the name, age and condition of other children
15 in the environment; and an evaluation as to whether there
16 would be an immediate and urgent necessity to remove the
17 child from the environment if appropriate family
18 preservation services were provided. After seeing to the
19 safety of the child or children, the Department shall
20 forthwith notify the subjects of the report in writing. The
21 notice shall be served via personal delivery (verified by
22 the subject's signature) or certified mail. Notice shall be
23 issued to all adult subjects and all alleged perpetrators
24 over the age of 12 years within 10 days after commencement
25 of the investigation unless the investigator provides a
26 sworn certification of the attempts to locate the subject

1 or alleged perpetrator, in which case notice shall be
2 provided at the soonest practicable time. This written
3 notice shall include the following:

4 (A) Notice that the Department is investigating a
5 report of child abuse or neglect.

6 (B) A summary of the allegations in the report,
7 including the time period during which the abuse or
8 neglect is alleged to have occurred.

9 (C) The consequences of a finding of "indicated",
10 including the period of time during which such a
11 finding will remain registered in the state central
12 register unless amended or expunged.

13 (D) The rights of the subject during the course of
14 the investigation, including the means available to
15 secure additional information concerning the
16 investigation process and the rights of review
17 therefrom and, for child contact employees, the right
18 to have an administrator's conference prior to
19 registration of an indicated report.

20 (E) The rights under this Act in regard to
21 amendment or expungement if the report is ultimately
22 determined to be "indicated" pursuant to Section 7.12.
23 ~~, of the existence of the report and their rights~~
24 ~~existing under this Act in regard to amendment or~~
25 ~~expungement.~~

26 To fulfill the requirements of this Section, the Child

1 Protective Service Unit shall have the capability of providing
2 or arranging for comprehensive emergency services to children
3 and families at all times of the day or night.

4 (4) If (i) at the conclusion of the Unit's initial
5 investigation of a report, the Unit determines the report
6 to be a good faith indication of alleged child abuse or
7 neglect that warrants a formal investigation by the Unit,
8 the Department, any law enforcement agency or any other
9 responsible agency and (ii) the person who is alleged to
10 have caused the abuse or neglect is employed or otherwise
11 engaged in an activity resulting in frequent contact with
12 children and the alleged abuse or neglect are in the course
13 of such employment or activity, then the Department shall,
14 except in investigations where the Director determines
15 that such notification would be detrimental to the
16 Department's investigation, inform the appropriate
17 supervisor or administrator of that employment or activity
18 that the Unit has commenced a formal investigation pursuant
19 to this Act, which may or may not result in an indicated
20 report. The Department shall also notify the person being
21 investigated of the commencement of the investigation.
22 This notice shall include the required information
23 enumerated in subdivisions (b) (3) (A) through (b) (3) (E) of
24 Section 7.4. ~~, unless the Director determines that such~~
25 ~~notification would be detrimental to the Department's~~
26 ~~investigation.~~

1 (c) In an investigation of a report of suspected abuse or
2 neglect of a child by a school employee at a school or on
3 school grounds, the Department shall make reasonable efforts to
4 follow the following procedures:

5 (1) Investigations involving teachers shall not, to
6 the extent possible, be conducted when the teacher is
7 scheduled to conduct classes. Investigations involving
8 other school employees shall be conducted so as to minimize
9 disruption of the school day. The school employee accused
10 of child abuse or neglect may have his superior, his
11 association or union representative and his attorney
12 present at any interview or meeting at which the teacher or
13 administrator is present. The accused school employee
14 shall be informed by a representative of the Department, at
15 any interview or meeting, of the accused school employee's
16 due process rights and of the steps in the investigation
17 process. The information shall include, but need not
18 necessarily be limited to, the right, subject to the
19 approval of the Department, of the school employee to
20 confront the accuser, if the accuser is 14 years of age or
21 older, or the right to review the specific allegations that
22 ~~which~~ gave rise to the investigation, and the right to
23 review all materials and evidence that have been submitted
24 to the Department in support of the allegation. These due
25 process rights shall also include the right of the school
26 employee to present countervailing evidence regarding the

1 accusations.

2 (2) If a report of neglect or abuse of a child by a
3 teacher or administrator does not involve allegations of
4 sexual abuse or extreme physical abuse, the Child
5 Protective Service Unit shall make reasonable efforts to
6 conduct the initial investigation in coordination with the
7 employee's supervisor.

8 If the Unit determines that the report is a good faith
9 indication of potential child abuse or neglect, it shall
10 then commence a formal investigation under paragraph (3) of
11 subsection (b) of this Section.

12 (3) If a report of neglect or abuse of a child by a
13 teacher or administrator involves an allegation of sexual
14 abuse or extreme physical abuse, the Child Protective Unit
15 shall commence an investigation under paragraph (2) of
16 subsection (b) of this Section.

17 (c-5) In any instance in which a report is made or caused
18 to made by a school district employee involving the conduct of
19 a person employed by the school district, at the time the
20 report was made, as required under Section 4 of this Act, the
21 Child Protective Service Unit shall send a copy of its final
22 finding report to the general superintendent of that school
23 district.

24 (d) If the Department has contact with an employer, or with
25 a religious institution or religious official having
26 supervisory or hierarchical authority over a member of the

1 clergy accused of the abuse of a child, in the course of its
2 investigation, the Department shall notify the employer or the
3 religious institution or religious official, in writing, when a
4 report is unfounded so that any record of the investigation can
5 be expunged from the employee's or member of the clergy's
6 personnel or other records. The Department shall also notify
7 the employee or the member of the clergy, in writing, that
8 notification has been sent to the employer or to the
9 appropriate religious institution or religious official
10 informing the employer or religious institution or religious
11 official that the Department's investigation has resulted in an
12 unfounded report.

13 (e) Upon request by the Department, the Department of State
14 Police and law enforcement agencies are authorized to provide
15 criminal history record information as defined in the Illinois
16 Uniform Conviction Information Act and information maintained
17 in the adjudicatory and dispositional record system as defined
18 in Section 2605-355 of the Department of State Police Law (20
19 ILCS 2605/2605-355) to properly designated employees of the
20 Department of Children and Family Services if the Department
21 determines the information is necessary to perform its duties
22 under the Abused and Neglected Child Reporting Act, the Child
23 Care Act of 1969, and the Children and Family Services Act. The
24 request shall be in the form and manner required by the
25 Department of State Police. Any information obtained by the
26 Department of Children and Family Services under this Section

1 is confidential and may not be transmitted outside the
2 Department of Children and Family Services other than to a
3 court of competent jurisdiction or unless otherwise authorized
4 by law. Any employee of the Department of Children and Family
5 Services who transmits confidential information in violation
6 of this Section or causes the information to be transmitted in
7 violation of this Section is guilty of a Class A misdemeanor
8 unless the transmittal of the information is authorized by this
9 Section or otherwise authorized by law.

10 (Source: P.A. 95-908, eff. 8-26-08.)

11 (325 ILCS 5/7.12a new)

12 Sec. 7.12a. Notification of Child Protective Service Unit
13 determination. Within 5 business days following the
14 Department's determination of whether a report is "indicated",
15 "unfounded", or "undetermined", the Department shall issue
16 written notice to all subjects, including the alleged
17 perpetrator and the parents, personal guardians, or legal
18 custodians of the minor subjects of the report. The notice
19 shall include the process by which subjects of an unfounded
20 report may request that the report be retained as an
21 intentional false report. The written notice of an indicated
22 report shall be served either via certified mail or by personal
23 delivery (verified by the recipient's signature) and shall
24 include the following information:

25 (1) Notice of the Department's determination,

1 including the allegations for which an indicated finding is
2 made.

3 (2) As to each indicated finding, the person or persons
4 deemed responsible for the alleged abuse or neglect.

5 (3) A summary of the factual basis for the
6 determination, which may include the summary ordinarily
7 used by the Department to explain the rationale for its
8 decision.

9 (4) The consequences of an indicated report, including
10 the registry period for the indicated report unless
11 otherwise expunged.

12 (5) The process by which the subjects of any report may
13 access the Department's records concerning the report.

14 (6) The process by which the subjects of an indicated
15 report may seek amendment or expungement of the report from
16 the register, including information as to how the subject
17 may secure a neutral review of the basis for the indicated
18 report.

19 (325 ILCS 5/7.12b new)

20 Sec. 7.12b. Finality of Child Protective Service Unit
21 determination. The Department's determination of unfounded and
22 indicated reports shall be deemed a final agency determination
23 as of the date of the registry of the determination in the
24 register. The Department shall not accept for investigation any
25 allegations that have previously been the subject of a final

1 agency determination arising from a common nucleus of operative
2 facts. The Department may conduct subsequent investigations as
3 to any allegations that were previously deemed "undetermined".

4 (325 ILCS 5/7.15) (from Ch. 23, par. 2057.15)

5 Sec. 7.15. Other information in central register; request
6 for expungement or amendment of indicated finding.

7 (a) The central register may contain such other information
8 which the Department determines to be in furtherance of the
9 purposes of this Act. Pursuant to the provisions of Sections
10 7.14 and 7.16, the Department may amend or remove from the
11 central register appropriate records upon good cause shown and
12 upon notice to the subjects of the report and the Child
13 Protective Service Unit.

14 (b) Notwithstanding any other provision of law to the
15 contrary, a subject of an indicated report may request
16 expungement or amendment of that report if there has been a
17 judicial determination in his or her favor arising from a
18 common nucleus of operative facts as the indicated finding. A
19 subject may make a request for expungement or amendment
20 pursuant to this Section at any time within one year after the
21 judicial determination has become final and unappealable, or
22 within one year after the effective date of this amendatory Act
23 of the 96th General Assembly. Within 14 calendar days after
24 receiving a request pursuant to this Section, the Department
25 shall determine whether the judicial determination arises from

1 a common nucleus of operative facts as the indicated finding.
2 If the Department concludes that the judicial finding does
3 arise from a common nucleus of operative facts, it shall
4 expunge the indicated finding against the person if it
5 concludes that the judicial determination found any of the
6 following:

7 (1) The facts giving rise to the allegation of abuse or
8 neglect do not give rise to probable cause.

9 (2) The facts giving rise to the allegation of abuse or
10 neglect are not supported by a preponderance of the
11 evidence.

12 (3) The facts giving rise to the allegation of abuse or
13 neglect do not support the conclusion that the subject of
14 the report is responsible for the abuse or neglect.

15 (4) The petition, complaint, or charge alleging the
16 abuse or neglect has been subject to a final dismissal.

17 If the Department concludes that expungement is proper
18 under this Section, it shall notify the subject of its
19 conclusions and forthwith expunge all information identifying
20 that particular subject from the central register. If the
21 Department concludes either that the judicial determination
22 does not arise from a common nucleus of operative facts or that
23 the judicial determination was not favorable to the subject in
24 accordance with paragraphs (1) through (4), it shall notify the
25 subject of its final agency determination to maintain the
26 indicated finding in the register and permit the subject to

1 file an administrative expungement appeal of that final agency
2 determination within 60 days after receiving the notice of the
3 Department's determination. Notice of the determination must
4 be served via either certified mail or verified personal
5 delivery.

6 (c) Notwithstanding any other provision of law to the
7 contrary, the dismissal of a petition alleging abuse or neglect
8 filed pursuant to the Juvenile Court Act of 1987 shall be a
9 dismissal with prejudice for purposes of this Act. A dismissal
10 with prejudice of a petition arising from a common nucleus of
11 operative facts giving rise to an indicated report, including a
12 dismissal pursuant to a continuance under supervision as
13 described in Section 2-20 of the Juvenile Court Act of 1987,
14 shall be treated as a judicial determination subject to the
15 requirements of subsection (b) of Section 7.15.

16 (d) The Director and his or her designees shall have the
17 authority to expunge or amend indicated findings from the
18 central register on the basis of newly discovered evidence,
19 rehabilitation, recantations, or any other just cause.

20 (Source: P.A. 90-15, eff. 6-13-97.)

21 (325 ILCS 5/7.16) (from Ch. 23, par. 2057.16)

22 Sec. 7.16. For any investigation or appeal initiated on or
23 after, or pending on July 1, 2009 ~~1998~~, the following time
24 frames shall apply. Within 60 days after a subject of a report
25 received actual notice of the indicated report or within one

1 year after a final judicial determination arising from a common
2 nucleus of operative facts as the indicated report, whichever
3 is later, that ~~the notification of the completion of the Child~~
4 ~~Protective Service Unit investigation, determined by the date~~
5 ~~of the notification sent by the Department, a subject of a~~
6 ~~report~~ may request the Department to expunge or amend the
7 record ~~or remove the record~~ of the report from the register.
8 Actual notice shall be presumed if notification of the Child
9 Protective Service Unit determination, described under Section
10 7.12a, is served upon the subject of a report by either
11 certified mail or verified personal delivery. Such request for
12 expungement or amendment shall be in writing and directed to
13 such person as the Department designates in the notification.
14 If the Department disregards any request to do so or does not
15 act within 10 days, the subject shall have the right to a
16 hearing within the Department to determine whether the record
17 of the report should be amended or removed on the grounds that
18 it is inaccurate or it is being maintained in a manner
19 inconsistent with this Act, except that there shall be no such
20 right to a hearing on the ground of the report's inaccuracy if
21 there has been a court finding of child abuse or neglect, the
22 report's accuracy being conclusively presumed on such finding.
23 Such hearing shall be held within a reasonable time after the
24 subject's request and at a reasonable place and hour. The
25 appropriate Child Protective Service Unit shall be given notice
26 of the hearing. In such hearings, the burden of proving the

1 accuracy and consistency of the record shall be on the
2 Department and the appropriate Child Protective Service Unit.
3 The hearing shall be conducted by the Director or his designee,
4 who is hereby authorized and empowered to order the amendment
5 or removal of the record to make it accurate and consistent
6 with this Act. The final decision shall be made, in writing,
7 and served upon the person requesting the hearing at the close
8 of the hearing, or within 45 days thereof, and shall state the
9 reasons upon which it is based.

10 If a subject of the report claims that he or she did not
11 have actual notice that an indicated report had issued against
12 him or her, the subject may request an appeal of the indicated
13 report within one year after his or her discovery of the
14 indicated report. Upon receiving the request, the Department
15 shall grant an evidentiary hearing on the merits of the
16 indicated report unless the Department establishes that the
17 subject had actual notice and that allowing the appeal would
18 prejudice the Department. If the Department maintains that the
19 appeal is untimely and proper notice was provided, it must
20 notify the subject requesting the appeal of that decision
21 within 15 calendar days after receiving the request for appeal.
22 Notice of this decision must be served via either certified
23 mail or verified personal delivery. The subject may then,
24 within 30 calendar days after receiving the Department's
25 decision, request a hearing as to his or her receipt of notice.
26 At the hearing, the Department bears the burden of proving the

1 following by a preponderance of the evidence:

2 (1) The subject did have actual notice of the indicated
3 report. If the Department establishes that the notice of
4 the indicated report was served upon the subject by
5 certified mail or verified personal delivery, there is a
6 rebuttable presumption that the subject had actual notice
7 of the indicated finding on the date of service. In the
8 event the Department cannot establish actual notice of the
9 indicated report by a preponderance of the evidence, the
10 Department shall afford the subject the right to proceed to
11 an expungement or amendment appeal.

12 (2) The Department is prejudiced by allowing an appeal
13 on the merits of the indicated report. Prejudice may be
14 shown by unexcused delay on the part of the appellant,
15 unavailability of Department personnel who investigated
16 the matter making it unreasonable to allow the appeal to
17 proceed, or other circumstances. If the Department cannot
18 establish prejudice by a preponderance of the evidence, the
19 Department shall afford the subject the right to proceed to
20 an expungement or amendment appeal.

21 The final administrative decision as to the timeliness of
22 the request shall be made, in writing, and served upon the
23 person requesting the hearing as to receipt of notice at the
24 close of the hearing, or within 15 calendar days thereafter,
25 and shall state the reasons upon which it is based.

26 All final decisions under this Section shall be served upon

1 the subject of the report who is requesting an amendment or
2 removal of the record, or the subject's authorized
3 representative, by certified mail or verified personal
4 delivery; the decision shall be deemed to have been served on
5 the date upon which the subject received the Department's
6 written final decision. Decisions of the Department under this
7 Section are administrative decisions subject to judicial
8 review under the Administrative Review Law.

9 Should the Department grant the request of the subject of
10 the report pursuant to this Section either on administrative
11 review or after administrative hearing to amend an indicated
12 report to an unfounded report, the report shall be released and
13 expunged in accordance with the standards set forth in Section
14 7.14 of this Act forthwith.

15 (Source: P.A. 90-15, eff. 6-13-97; 90-608, eff. 6-30-98.)

16 (325 ILCS 5/8.3) (from Ch. 23, par. 2058.3)

17 Sec. 8.3. The Department shall assist a Circuit Court
18 during all stages of the court proceeding in accordance with
19 the purposes of this Act and the Juvenile Court Act of 1987 by
20 providing full, complete, and accurate information to the court
21 and by appearing in court if requested by the court. Failure to
22 provide assistance requested by a court shall be enforceable
23 through proceedings for contempt of court. If the Circuit Court
24 decision results in a final judicial determination arising from
25 a common nucleus of operative facts as an indicated finding and

1 that judicial determination is favorable to the subject in
2 accordance with subdivisions (b)(1) through (b)(4) of Section
3 7.15, then in the cases in which the Department has presented
4 testimony or had counsel present during the proceedings the
5 Department shall ensure that the Circuit Court is aware of the
6 status of any indicated finding that remains in the central
7 register and shall further notify the subject of his or her
8 right to request expungement pursuant to subsection (b) of
9 Section 7.15. The Department shall allow the request if filed
10 within one year after the judicial determination has become
11 final and unappealable.

12 (Source: P.A. 88-310.)